

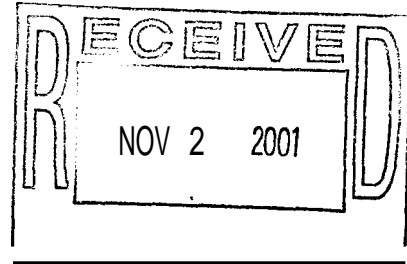


## IN DEFENSE OF ANIMALS

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November 1, 2001

National Marine Fisheries Service  
Office of Protected Resources, Permits Division  
1315 East-West Highway, Rm. 13795  
Silver Spring, MD 20910



VIA FACSIMILE: 301/713-0376 (4 pages)

### RE: COMMENTS ON NMFS AMENDMENTS TO REGULATIONS RELATED TO CAPTIVE MARINE MAMMALS

To Whom It May Concern:

Following **please** find comments by In **Defense of Animals (IDA)** on the National Marine Fisheries Service's (NMFS) **proposed** amendments to **regulations** relating to marine mammals held for public **display purposes**, pursuant to the July 3, 2001 Federal Register notice.

#### General Comments

**IDA** supports NMFS' efforts to strengthen regulations **relating to the** import, export and public display of captive marine mammals in the U.S. **IDA** concurs with legal opinions indicating **that despite** 1994 amendments to the Marine Mammal Protection Act, **NMFS maintains** significant jurisdiction **over captive** marine mammals in the U.S., **and** over the **export of** marine mammals abroad. **IDA** urges NMFS to **exercise this authority, rather than** capitulate to incorrect claims that only the USDA's Animal and Plant Health Inspection Service retains authority **over** captive marine mammals.

#### Specific Comments

##### *Disposition for a Special Exemption Purpose*

- **IDA supports** the requirement for a Federal Register notice and 30-day public comment period prior to authorization **of any** permit for permanent public display **of beached or stranded marine** mammals who has **been** deemed to be "unreleasable."
- IDA supports the requirement for a permit to permanently display a stranded or beached marine **mammal** who **has been deemed to be** "unreleasable."
- **IDA does** not support the statement that "**Captive** marine mammals may not be released into the wild." **IDA** believes that **a** determination must **be** made on **a** case-by-case basis, but that a sweeping statement to **the effect** above scientifically not justified.

- IDA does support the granting of scientific research permits for credible and scientifically **sound plans for the release of captive marine mammals** to the wild.
- **IDA** believes that **release** of captive **marine mammals** for recall training should require a permit, subject to public comment, and that a simple “authorization” from the Office of Director is insufficient. Many of the **same** issues that are of concern in the release of a captive marine mammal from a **public** display situation (i.e. potential transmission of disease) are also **relevant** to recall training situations. **IDA** notes the inherent contradiction in NMFS strong **stand** against release of captive marine and its apparent lack of concern **about** recall training activities.
- IDA believes that authorization for recall training should **be** issued only for the benefit of **the** individual **animals** involved.

#### *General Public Display Requirements*

- **IDA** **opposes** the **conduct of invasive** research on marine **mammals** and believes that NMFS should ban it outright, rather than **allow an** exemption with a **research** permit.

#### *Permits to Capture or Import*

- **IDA** **supports** the requirement that all **facilities** seeking to **import** or **display** marine mammals comply **with** APHIS **standards**. **IDA** believes that NMFS should have inspection authority to determine such compliance.
- **IDA** believes that NMFS should have the **authority** to reject the application of any facility **seeking** to display or import **marine mammals** if NMFS **deems** that their education/conservation program is not **sufficient**. This would **apply** to traveling shows or amusement **parks where** the purpose of the marine mammal **program** is **clearly** entertainment, rather than education.
- **IDA** **believes** that the NMFS plan to verify whether or not a **facility** is “open to the public on a regularly scheduled basis” by **requiring only the** submission of a brochure is insufficient.
- **IDA** **supports** the requirement that applicants for capture or import permits **must** demonstrate that the activity **will** “have the **least** possible **effect** on wild populations” and will not “have a **significant** impact on the species or stock of the animals to be captured. **IDA** **believes** that NMFS must **also** codify the requirement that the capture method must be “humane.”

- **IDA** does not **support** the allowance of **re-export of a** marine mammal under **an** import **permit**. **IDA** believes that any **facility seeking to re-export a marine** mammal should be required to apply for an export **permit**, subject to all the requirements set forth in NMFS regulations (see **below**). **This** requirement **will** address the possibility of changing conditions at the facilities to **which** the marine mammal **is** to be exported **and will ensure** the humane treatment of **the animal** as required by the MMPA.

#### *Transport or Transfer of Captive Animals and Notifications*

- **IDA** does not agree with the statement that “**Holders** of captive marine mammals for public **display** have the right to transport, export, sell, purchase, **transfer** an interest in or otherwise transfer **marine** mammals for public **display purposes without** authorization from NMFS, provided that the recipient is in compliance with the MMPA . . .” **IDA** does not understand **the** point of NMFS making a **determination about** the recipient’s compliance **status** in the absence of authority to stop **a transfer**, sale or **export** a marine mammal. In **order** for NMFS to **exercise** that authority, an authorization process must be in **place**.
- **IDA** believes that **an exemption** to the **15-day** notice rule should be allowed only in the case of **a documented medical emergency**. **IDA** does not believe that the mere possibility of **missing** “**a critical business opportunity**” is sufficient **cause** for an exemption to this rule.
- **IDA** believes that NMFS should have **inspection authority** to determine whether the **shipper** and the receiver are in compliance with APHIS regulations, and should not rely solely on certifications from the shippers and receivers themselves.

#### *Reporting*

- **IDA** agrees with continued reporting requirements, including the **30-day** notice of births or deaths.

#### *Submission of Notifications of Reports*

- **IDA** objects to the requirement that facilities **report birth/death information and 15-day** transport notifications directly International **Species Information System (ISIS)** and not to NMFS. **IDA** is concerned that, as **a private, non-profit organization, ISIS** is not subject to the Freedom of Information Act (FOIA). **IDA** believes that **if** NMFS allows ISIS to retain current inventory data **and** does not keep such data in its own government offices, then public **access** to the information through FOIA **may be** restricted. This **would appear** to

contradict with NMFS stated goal of “enhancing public access to **the captive marine** mammal information required **under** the MMPA.”

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#### *Export of Captive Marine Mammals*

- **IDA supports** the requirement of comity letters **from foreign governments** to ensure that any **facilities** receiving captive **marine mammals exported** from the U.S. 1) **comply** with care and maintenance standards comparable to those of APHIS; 2) **are** held for **purposes** consistent with the MMPA; and 3) provide inventory information **on** an ongoing basis **to** NMFS.
- **IDA** believes **that** the comity agreements should **also include the** requirement that any facility **that engages in practices** that violate U.S. laws or policies **must** be considered **as** not engaging in actions that are **comparable to** U.S. requirements. As a result, NMFS should not **authorize** transfer authorizations for such facilities. **An** example of this would be a facility that collects animals from **brutal drive fisheries**, which **are** conducted in Japan **and have been** deemed by the U.S. government **to** be an inhumane **capture** method.
- **IDA** believes that NMFS' authority should **go beyond a mere requirement for a letter of** comity **and should extend to the** conduct of inspections to determine **whether** or not foreign facilities **seeking to import marine mammals from the U.S. are** in compliance with **APHIS** standards.
- **IDA** believes that **after a marine mammal is imported** to a foreign facility, it **is** NMFS' legal **responsibility** to continue to monitor **that facility** to ensure that compliance **with APHIS** standards continues.

#### *Seizure of Marine Mammals*

- **IDA supports** NMFS' authority to revoke permits or **seize marine** mammals held for public **display** if a **facility** does not comply **with APHIS** regulations.

**IDA** thanks NMFS for your consideration of **these** comments. We support **your** efforts to clarify **and** strengthen NMFS's jurisdiction over captive marine mammals, and we **urge you** to exercise your authority **aggressively and consistently** to **ensure the** humane treatment of **captive marine mammals**, as required **by the** MMPA.

Sincerely,

Suzanne Roy  
Program Director